IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Crl.Rev.Pet.No. 2938 of 2007()

CRA.166/2005 of ADDL. SESSIONS COURT (ADHOC-2), THRISSUR
CC.1161/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHALAKUDY

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED:

ALI, S/O. KUNJICHECKAN,
EDAKUDATHIL HOUSE, PALLIPPURAM DESOM, MALA.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS: STATE & COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. NO. 2938 of 2007

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Dated, this the 10th day of August 2007

ORDER

Revision Petitioner who was the accused in C.C. 1161 of 2002 on the file of the J.F.C.M., Chalakkudy challenges the conviction entered and sentence passed for offences punishable under Section 341 and 323 read with Sec. 34 I.P.C.

2. The case of the prosecution can be summarised as follows:

On 21-6-2002 at about 12.45 p.m. the accused asked P.W.5 his first wife to go out of the house as she did not accept the 2nd wife her and consequent on the disobedience by P.W.5 the accused caught and heat her with his hand over her shoulder and head and thereby voluntarily caused hurt to her. The accused has, therefore, committed offences punishable under Sections 341 and 323 I.P.C.

3. On the side of the prosecution eight witnesses were examined as P.Ws 1 to 8 and four documents were as Exts.P1 to P4. After the close of the prosecution evidence, the accused was questioned under Section 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him. He denied those circumstances and maintained his innocence.

4. The learned Magistrate, after trial, acquitted the revision petitioner of the offence punishable under Sec. 341 I.P.C. but convicted him of the offence under Sec. 323 I.P.C. An appeal preferred by the revision petitioner as Crl.Appeal 166 of 2005 before the Addl.Sessions Judge, (Fast Track Court No. II- Adhoc) Thrissur was unsuccessful. Hence this Revision.

5. Eventhough the learned counsel appearing for the revision petitioner assailed the conviction entered and the sentence passed

against the revision petitioner, the conviction has been recorded by the courts below, after a careful evaluation of the oral and documentary evidence in the case. in the absence of any infirmity in the appreciation of evidence by the courts below, this Court sitting in the rarefied revisional jurisdiction will be loathe to interfere with the said finding. The conviction is, accordingly, confirmed.

6. What remains to be considered is the adequacy or otherwise of the sentence imposed on the revision petitioner. The court below have imposed simple imprisonment for one month for the conviction under Sec. 323 I.P.C. Having regard to the facts and circumstances of the case, including the nature of injuries sustained by P.W1 and the disposition in which the parties are placed, I am of the view that penal servitude by way of incarceration is not warranted in this case. I am of the view that imprisonment till the rising of the court and an appropriate fine shall meet the ends of justice. Accordingly, for his conviction under section 323 I.P.C., the revision petitioner shall undergo imprisonment till the rising of the court and pay a fine of Rs. 5000/- (Rupees five thousand only). On default to pay the fine, he shall undergo simple imprisonment for one month. From out of the fine amount, a sum of Rs. 3,000/- shall be paid to P.W.5 by way of compensation under Sec. 357 (1) Cr.P.C. The fine shall be paid within one month from today.

In the result, this revision is disposed of confirming the conviction and modifying the sentence as above.

V. RAMKUMAR,

(JUDGE)

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